

FILED

2008 JUN 27 A 10:49

1 JOSEPH P. RUSSONIELLO (CSBN 44332)  
2 United States Attorney  
3

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

E-FILING

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ATUL MALHOTRA,

16 Defendant.

CR - 08 00423

No.  
VIOLATION: 18 U.S.C. § 1832(a)(2) –  
Theft of Trade Secrets

JF  
HRL

SAN JOSE VENUE

19 INFORMATION

20 The United States Attorney charges:

21 At all times relevant to this Information:

22 Background

23 1. International Business Machines Corporation ("IBM"), headquartered in Armonk,  
24 New York, was a multinational corporation engaged in the business of information technology.  
25 IBM's outsourcing and other businesses involve various IBM and non-IBM products, including  
26 computer servers, networking equipment, workstations, printers, software, and other items. These  
27 products were sold and shipped, and intended to be sold and shipped, in interstate and foreign  
28 commerce.

1       2.     Hewlett Packard Company (“HP”), headquartered in Palo Alto, California, was a  
2 competitor of IBM.

3       3.     During on or about November 17, 1997 to on or about April 28, 2006, defendant Atul  
4 Malhotra was employed by IBM as Director, Sales and Business Development, Output Management  
5 Services, IBM Global Services. In that position, defendant Atul Malhotra was responsible for  
6 leading a team that developed bids and sold Output Managed Services (management of printers and  
7 other output devices) to customers, including as a component of larger IBM strategic outsourcing  
8 engagements. As an IBM employee, defendant Atul Malhotra agreed to abide by company terms and  
9 polices to maintain the confidentiality of proprietary information and to avoid the disclosure of any  
10 trade secrets to any third party.

11      4.     On or about March 15, 2006, while employed at IBM, defendant Atul Malhotra  
12 requested and received confidential information concerning IBM Global Services, CC Calibration  
13 Metrics, which was marked “IBM Confidential” on each page. This information was a trade secret  
14 in that IBM took reasonable measures to keep the information secret; and the information derived  
15 independent economic value, actual or potential, from not being generally known to, and not being  
16 readily ascertainable through proper means by, the public. In providing the requested information,  
17 a Pricing Coordinator at IBM Global Services directed defendant Atul Malhotra: “given the  
18 sensitive nature of the material please do not distribute.”

19      5.     In or about May 2006, defendant Atul Malhotra became HP Vice President of  
20 Imaging and Printing Services.

21      6.     On or about July 25, 2006, defendant Atul Malhotra sent an e-mail to an HP Senior  
22 Vice President with the subject, “For Your Eyes Only,” and attached the IBM Global Services, CC  
23 Calibration Metrics.

24      7.     On or about July 27, 2006, defendant Atul Malhotra sent an e-mail to another HP  
25 Senior Vice President with the subject, “For Your Eyes Only - confidential,” and attached the IBM  
26 Global Services, CC Calibration Metrics.

27     // // //

28     // // //

COUNT ONE: ( 18 U.S.C. § 1832 - Theft of Trade Secrets)

8. On or about July 25, 2006, in the Northern District of California, and elsewhere, the defendant

ATUL MALHOTRA

with intent to convert a trade secret to the economic benefit of someone other than the owner thereof, specifically, IBM Global Services, CC Calibration Metrics, which trade secret was related to, and included in, products that were produced for and placed in interstate and foreign commerce, did, without authorization copy, duplicate, download, upload, photocopy, replicate, transmit, deliver, send, mail, communicate, and convey such information, and attempt to do so, and intending and knowing that his possession, appropriation or communication would injure IBM, the owner of the trade secret.

All in violation of Title 18, United States Code, Sections 1832(a)(2)

Dated: June 27, 2008

JOSEPH P. RUSSONIELLO  
United States Attorney

MATTHEW A. PARRELLA  
Chief, San Jose Branch

(Approved as to form: *Mack L. Froehling*)

AUSA SUSAN KNIGHT  
AUSA MARK L. KROTKI

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**

BY:  COMPLAINT  INFORMATION  INDICTMENT  
 SUPERSEDING

**OFFENSE CHARGED**

18 U.S.C. § 1832(a)(2) - Theft of Trade Secret

**E-FILING**

Petty  
 Minor  
 Misdemeanor  
 Felony

**PENALTY:**

10 years imprisonment, \$250,000 fine, 5 years supervised release, \$100 special assessment

Name of District Court, and/or Judge/Magistrate Location  
**NORTHERN DISTRICT OF CALIFORNIA****FILED**

2008 JUN 27 A 10:44

ATHUL MALHOTRA

RICHARD W. WEAKLEY

CLERK

U.S. DISTRICT COURT NUMBER  
NO. DIST. OF CA. S.J.**JF****CR - 08 00423****DEFENDANT****HRL****IS NOT IN CUSTODY**

1)  Has not been arrested, pending outcome this proceeding.  
      If not detained give date any prior summons was served on above charges

2)  Is a Fugitive

3)  Is on Bail or Release from (show District)

**IS IN CUSTODY**

4)  On this charge

5)  On another conviction

6)  Awaiting trial on other charges }    Fed'l    State

If answer to (6) is "Yes", show name of institution

Has detainer been filed?    Yes    No }   If "Yes" give date filed

**DATE OF ARREST**   Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

Month/Day/Year

**DATE TRANSFERRED TO U.S. CUSTODY**

This report amends AO 257 previously submitted

Name and Office of Person Furnishing Information on THIS FORM

**JOSEPH P. RUSSONIELLO** U.S. Att'y    Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)

Susan Knight &amp; Mark Krotoski

**PROCESS:** SUMMONS  NO PROCESS\*

If Summons, complete following:

 Arraignment    Initial Appearance

Defendant Address:

 WARRANT   Bail Amount:

\*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments: